

CITY COUNCIL PROCEEDINGS

Tuesday, April 26, 2011

8:00 p.m.

1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the special April 26, 2011 City Council meeting to order at 8:00 p.m. in Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Appelbaum, Becker, Gray, Karakehian, and Morzel.

Council Members Ageton, and Cowles were absent.

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE – 8:01 p.m.

1. Yazan Fattaleh expressed concern that municipalization would not successfully create renewable energy that could compete with the cost from Xcel. He was concerned that his tuition would go up as the costs for energy at the University increase.

Staff and Council Response:

Council Member Gray clarified that the city did not have a franchise currently and suggested the Mr. Fattaleh look at Palo Alto municipalization. Stanford University would be a good resource as well.

3. CONSENT AGENDA: - 8:05 p.m.

A. **CONSIDERATION OF A MOTION TO APPROVE THE MARCH 30, 2011 CITY COUNCIL MEETING MINUTES.**

The minutes had amendments from Council Members Gray and Morzel.

B. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7790 AUTHORIZING THE GRANTING OF A REVOCABLE LICENSE AGREEMENT TO ALLOW FOR BOULDER BIKE SHARING LOCATIONS IN THE PUBLIC RIGHT OF WAY, ON CITY-OWNED PARCELS INCLUDING PARKS PROPERTY.**

C. **CONSIDERATION OF A MOTION TO APPROVE SHIPMENT OF FRESH WATER TO JAPAN.**

Deputy Mayor Wilson explained the item as a request that had come to him for the City's support of shipping bottled water to Japan. In order to obtain free shipping, Naropa University (facilitator of the effort) required sponsorship from a governmental entity. Since Boulder's Sister City of Yamagata is only 40 miles from the impact zone this was presented as an opportunity to reach out and assist Japan in a meaningful way at no cost to the city. A benefit concert was taking place to raise funds for bottled water.

Council Member Appelbaum moved, seconded by Wilson, to approve Consent Agenda items 3A through 3C with 3A as amended. The motion carried unanimously; 7:0, with Council Members Ageton and Cowles absent. Vote was taken at 8:11 p.m.

4. **POTENTIAL CALL- UP CHECK IN: - 8:12 p.m.**

No interest was expressed in the two potential call-up items listed under agenda item 8A.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS: - 8:13 p.m.**

- A. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7787 THAT PROPOSES AMENDMENTS TO TITLE 4, "LICENSES AND PERMITS," B.R.C. 1981, SPECIFICALLY RELATED TO SECTION 4-18-2, "PUBLIC PROPERTY USE PERMITS," B.R.C. 1981, REGARDING MOBILE FOOD VEHICLE SALES; ADDING A NEW SECTION 4-20-65, "MOBILE FOOD VEHICLE SALES," B.R.C. 1981; AND TITLE 9, "LAND USE CODE," B.R.C. 1981, AMENDING SECTION 9-6-5, "TEMPORARY LODGING, DINING, ENTERTAINMENT, AND CULTURAL USES," B.R.C. 1981. - 8:13 P.M.**

The presentation on the item was provided by Molly Winter, Downtown and University Hill and Parking Services Management Director. She noted this was a national trend and asset for communities. The goals of the project were to support Boulder's food culture, create a legal framework for operation, respond in a timely manner, balance interests, address operational impacts and preserve the "Main Street" pedestrian character of the commercial district. Meetings had been held with existing and potential vendors and research had been done to determine how other communities addressed mobile vending issues. She clarified that many communities who allow mobile vending actually have limitations in certain areas and with certain restrictions.

Ms. Winter noted that working with the Boulder County Health Department for approval, Compliance (pedestrian, bike, vehicle access regulations), Operations between 7 a.m. and 9 p.m., and appropriate disposal of waste were all incorporated in the ordinance that staff was proposing. Prohibitions included serving alcohol, amplified music and tables and chairs. Staff was proposing a distance of 100 feet from brick and mortar restaurants, 150 from residential zones and 200 feet from another food vehicle when they can operate in the public right-of-way. Areas of operation proposed included operation on Private Property (industrial, business, Downtown and Mixed Use zones) and on Public Property in Industrial zones and at Special events (no distance requirements).

Ms. Winter then noted that positive Board feedback was received from the Downtown Management Commission, University Hill Commercial Area

Management Commission, Planning Board, Downtown Boulder Business Improvement District and Downtown Boulder Inc. Additionally, staff had completed a survey of downtown restaurants. She noted that staff was not proposing including operation in Parks in the current ordinance. This issue would be forthcoming after future conversations with the Parks and Recreation department and Parks Board.

Council Member Karakehian asked how CU handled this issue. Staff responded that no discussion had occurred with CU about allowing this on University property.

Council Member Morzel asked if private parties were allowed to have a vendor on private property at a home in a residential area. Staff responded that this was allowable under the catering provisions if they followed the parking regulations. Ms. Morzel asked what category ice cream trucks fell under. Staff indicated those were considered mobile food vending vehicles and Planning would need to modify the ordinance to allow ice cream trucks. Charles Ferro responded that ice cream trucks technically were not permitted but staff operates on a complaint basis. This ordinance would regulate them like food trucks but agreed staff could research this and perhaps modify the ordinance.

Council Member Gray asked whether the Parks department was committed to reviewing mobile food vending uses in Parks in its 2011 work plan. Ms. Winter responded this would be in the Parks work plan in 2012 and Parks would need to look at where this use would be appropriate. Accelerating the review by Parks could be considered at the June 16th Study Session regarding the work program.

Council Member Becker clarified that some contracts for vendors in Parks were exclusive and some were not. City Manager Brautigam noted this was a new intersection between Parks and food vendors as it has been typical in the past to contract with a single vendor.

The Public hearing was opened at 8:36 p.m.

- 1) John Campbell spoke in support of having food trucks and thanked Council for considering the issue.
- 2) Rayme Rossello former owner of six restaurants and current owner of El Comida, voiced support for allowing mobile vending. Regarding threat to Downtown, there would be very little threat as there is virtually next to no public right-of-way near the Downtown area.
- 3) Ashlie Beckham, Walnut café and food truck owner spoke to the impacts to other food service owners but noted they represented a very small minority voice when there are over 100,000 residents plus workers in Boulder. She supported mobile vending.
- 4) Adrian Julian owner of Top of the Hill West. Has a mobile vending service on the outskirts of town but would like a location

established for service that would be available after closing hours of restaurants downtown.

- 5) David Adams with Downtown Boulder spoke in support of the ordinance as written with restrictions on locations. Boulder has a hyper competitive situation with restaurants in Boulder and most of them are suffering.
- 6) Shannan Aten owner of the Pastry Truck spoke in support of changing the distance requirement to 100 feet from an open business. She did not see any difference in the hours of operation as 9:00 – 10:00 or 11:00 would all create a competition. Access to parks would also be important.
- 7) Terry Jones a restaurant owner downtown spoke to the expense of brick and mortar and suggested it would create an unfair advantage. Equity was a real issue. It created a slippery slope...food trucks today, what tomorrow? Mobile bike repair etc.
- 8) Sean Maher, Downtown BID and DBI unanimously supported the ordinance as drafted as it provided equity for all parties. It did not ban trucks from downtown but limited appropriate locations.
- 9) Kim Boos and Brian Wood, owners of Tea & Cakes commented they actually considered opening a mobile food truck a few years ago. They didn't want to prevent the food trucks but couldn't support it if it created an uneven playing field. They pay premium rates for their location and it just didn't seem fair to allow trucks to pull up less than a block away then take off when they're done.
- 10) Tim Shaughnessy from the Lazy Dog agreed with the comments from the previous speakers. He also spoke to the suggestion of a 100 foot limitation and expressed that would really omit any chance of a level playing field.
- 11) Daniel Shaffer owner of Pazzo Calore which also has a second location in Denver, noted the food trucks were not allowed on the 16th Street Mall in Denver. It provided an unfair advantage and should be limited to locations at a reasonable distance. Given the lack of overhead, trucks have the advantage and ability to undercut costs.
- 12) David Cohen with Two Spoons and Spruce Confections. Liked food trucks but felt they needed to have rules and limitations like brick and Mortar such as ADA accommodations. Are they expecting existing restaurants to provide restrooms? Permits and processes, awnings for the front of buildings cost over \$10,000. The sign code eliminates the ability for him to put a sidewalk placard outside listing soups of the day. It would have brought him a \$2,000 fine.
- 13) Nicole Larsen, friend of a local business downtown, also spoke to the beginnings of food trucks which were to provide food to construction sights where they would have a captured audience. She did not hear any justification for a need for food trucks downtown. She thought they were a great fit for industrial parks thus creating new revenue instead of taking from others. They

should be required to handle waste and leave behind a clean location.

There being no further speakers the public hearing was closed at 9:30 p.m..

Deputy Mayor Wilson clarified with Ms. Winter that mobile food trucks in the commercial zones such as downtown would **not** be allowed in the public right-of-way, but would be allowed on private property with the permission from the property owner.

Council Member Becker asked about the possibility of the proliferation of other types of mobile vending. Ms. Winter noted she had not heard of any other businesses and the ordinance did not prohibited, nor allow those.

Council Members Gray and Becker clarified with the City Attorney that mobile food vendors could obtain permits to operate with the appropriate approved organized event or street closure permit as outlined in section 4-18-2 on page 16 of the memo.

Council Member Morzel asked if there were a proposed number of potential mobile vending vehicles. Staff responded to date there were 45 interested parties who had contacted the City.

Council Member Appelbaum clarified that, to date, none of the mobile food vending done in the City was done legally. Enforcement was primarily on a complaint basis.

City Attorney Carr clarified that multiple trucks could be allowed in the Daily Camera parking lot per the current provisions but the 100 foot rule would apply.

Council Member Karakehian moved, seconded by Appelbaum, to adopt Ordinance No. 7787 amending Title 4, "Licensing and Permits," B.R.C. 1981, section 4-18-2, "Public Property Use Permits," B.R.C. 1981; adding a new section 4-20-65, " Mobile Food Vehicle Sales," B.R.C. 1981; and amending Title 9, "Land Use Code," "B.R.C. 1981, section 9-6-5, " Temporary Lodging, Dining, Entertainment, and Cultural Uses, B.R.C. 1981.

Council Member Wilson offered a friendly amendment to replace the language on page 17, Section 9-6-5(d)(3)(L) as follows: fail to provide at least three separate and clearly marked receptacles for trash, recycling and compost and properly separate and dispose of all trash, refuse, compost, recycling and garbage that is generated by the use. The friendly amendment was accepted by the maker and seconder of the motion.

Vote was taken on the main motion as amended. The motion carried, 7:0.
Ageton and Cowles absent.

This item would come back for third reading on May 17, 2011.

Council Member Morzel moved, seconded by Appelbaum to suspend the rules and continue the meeting at 10:30 p.m. The motion carried 6:1;
Karakehian opposed, Ageton and Cowles absent.

B. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7786 THAT PROPOSES AMENDMENTS TO TITLE 8, "PARKS, OPEN SPACE, STREETS, AND PUBLIC WAYS" B.R.C. 1981 BY ALLOWING TEMPORARY STREET FURNITURE (A.K.A. CAFÉ SEATING) TO BE PLACED IN THE PUBLIC RIGHT OF WAY SUBJECT TO CONDITIONS AND SETTING FORTH RELATED DETAILS. - 10:30 P.M.

The presentation on the item was provided by Molly Winter. She described the purpose of the ordinance was to promote safety and vibrancy along the Downtown and University Hill areas. This ordinance did NOT impact the Pearl Street Mall which had its own regulations.

There being no speakers, the public hearing was closed.

Council Member Morzel moved, seconded by Karachian, to adopt Ordinance No. 7786 amending Title 8, "Parks, Open Space, Streets, and Public Ways" B.R.C.1981, sections 8-6-4, "Removal of Public Nuisances," B.R.C. 1981, 8-6-8 "Exempt Encroachments," B.R.C. 1981, and adding appendix 8-A and appendix 8-B. The motion carried, 7:0, Council Members Ageton and Cowles absent at 10:35 p.m.

6. MATTERS FROM THE CITY MANAGER:

A. CONSIDERATION OF A MOTION DIRECTING THE CITY MANAGER TO PROCEED WITH NEXT STEPS IN EVALUATING REDEVELOPMENT OF THE DIAGONAL PLAZA SHOPPING CENTER AND AREA, INCLUDING CONTINUED COMMUNICATIONS AND DATA GATHERING WITH PROPERTY OWNERS; SOLICITING FEEDBACK FROM POTENTIALLY INTERESTED DEVELOPERS AND TENANTS; AND A BLIGHT STUDY. – 10:36 P.M.

The presentation on this item was provided by Liz Hanson and David Driskell. She spoke to the staff recommendation for next steps to continue with work plan items and initiate a blight study.

Deputy Mayor Wilson moved, seconded by Morzel to direct the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; soliciting feedback from potentially interested developers and tenants; and a blight study.

Mayor Osborne clarified the blight study would be good for seven years.

Council Member Becker asked what information a blight study would give a developer that they wouldn't have already. Ms. Hanson indicated the state statute of 'finding of blight' would be a tool that could be utilized in the future.

Council Member Becker asked David Driskell to speak to the potential neighborhood plan and timeline given limited resources. Mr. Driskell commented there were numerous work plan items ahead of this one and private developer interests would certainly move it forward more quickly. Ms. Becker indicated she thought the obvious next step was determining the vision as she did not know if it was time to do a blight study just yet.

Council Member Appelbaum noted any consultant would likely find the area blighted due to the way the regulations were written and questioned what message it would send to do a blight study right away.

Council Member Becker offered a substitute motion to direct the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; and soliciting feedback from potentially interested developers and tenants. (removing the blight study recommendation).

Council Member Appelbaum moved, seconded by Morzel to suspend the rules and continue the meeting at 11:00 p.m. The motion carried 6:1; Karakehian opposed, Ageton and Cowles absent.

7. **MATTERS FROM THE CITY ATTORNEY:** - None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. **POTENTIAL CALL-UPS:**

1) **POTENTIAL CALL-UP OF A VACATION OF EASEMENT AT 1655 YARMOUTH.**
LAST OPPORTUNITY FOR CALL-UP: 04/26/2011, I.P. DATE: 04/20/2011, AND
VOTE/ACTION: STAFF LEVEL APPROVAL

No action was taken on this matter.

2) **LANDMARK ALTERATION CERTIFICATE FOR THE CONSTRUCTION OF A 917**
SQ. FT., ONE AND ONE HALF-STORY, TWO-CAR GARAGE AT 809 PINE STREET, PER
SECTION 9-11-18 OF THE BOULDER REVISED CODE 1981 (HIS2011-00003).
LAST OPPORTUNITY FOR CALL-UP: 05/03/2011, I.P. DATE: 04/20/2011, AND
VOTE/ACTION: CONDITIONALLY APPROVED/ 5-0.

No action was taken on this matter.

9. **PUBLIC COMMENT ON MATTERS:**

1. Ben Binder commented the only reason to move forward with a blight study would be to create an urban renewal district with the power to condemn and supplement with tax incremental financing. Don't waste \$15,000 during these hard economic times.

2. Lynn Segal reminded council of the huge study on Crossroads and agreed that council should forgo a blight study at this time.

10. **FINAL DECISIONS ON MATTERS:**

Vote was taken on whether to vote on the substitute motion directing the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; soliciting feedback from potentially interested developers and tenants (removing the blight study recommendation).


. The motion carried 5:2; Karakehian and Wilson opposed, Ageton and Cowles absent.

Vote was taken on the substitute motion to direct the city manager to proceed with next steps in evaluating redevelopment of the Diagonal Plaza shopping center and area, including continued communications and data gathering with property owners; and soliciting feedback from potentially interested developers and tenants. (removing the blight study recommendation). The motion carried 5:2, Ageton and Cowles absent at 11:14 p.m.

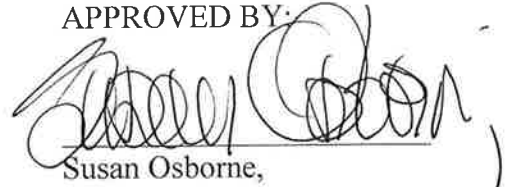
11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 11:20 P.M.

ATTEST:


Alisa D. Lewis,
City Clerk

APPROVED BY:


Susan Osborne,
Mayor